

*In the Matter of Anthony Davis, Project Manager Transportation (PS8731T),
Department of Transportation
DOP Docket No. 2004-3004
(Merit System Board, decided July 14, 2004)*

Anthony Davis requests a make-up of the promotional examination for Project Manager Transportation (PS8731T), Department of Transportation.

By way of background, the subject promotional examination was conducted on December 10, 2003 utilizing the Supervisory Test Battery (STB). The STB utilizes 120 multiple-choice test questions that are presented to candidates on a computer concerning issues, tasks and situations associated with their role as a supervisor in a fictitious organization. Candidates are required to achieve a raw score of at least 56.6 in order to pass the examination with a percentage average score of 70. Mr. Davis achieved a raw score of 50.8 and did not pass the examination.

On an appeal filed one day after the examination, Mr. Davis states that during the examination he advised the room monitor on at least three occasions that he was having problems with his computer. Specifically, he maintains that he was unable to read various words on the computer screen. Mr. Davis contends that the room monitor advised him to continue to take the examination as instructed; however, when he came upon the section of the test in which candidates have to select misspelled words, he was unable to read some of the words that were underlined for selection. Mr. Davis claims that this computer malfunction caused him significant delay and that he did not have a fair and accurate view of the correct answers from which to choose.

Further, Mr. Davis contends that when he got to the split screen where reading was required at the top of the screen and multi-choice answers were at the bottom, he was unable to select the scroll down indicator to read the text at the top of the page. Again, Mr. Davis claims that he summoned the room monitor concerning his computer problem and the monitor moved the cursor off the screen and was able to locate the scroll down indicated. Mr. Davis states that he was advised to continue and was informed by the room monitor that she would note the computer malfunction. However, since the scroll down indicator was off the screen, once he moved it, Mr. Davis claims that he was unable to locate the position of the scroll down indicator and had to keep guessing the position of the indicator to continue reading the passages. Mr. Davis argues that this also caused him significant delay in his ability to complete this section and, consequently, he was unable to complete the examination in the allowed time.

On December 11, 2003, Mr. Davis states that he telephoned the Department of Personnel (DOP) to register a complaint and was informed that the room monitor had noted the computer malfunctions that he experienced, but that he would be unable to file a complaint since he was required to do it during the night of the examination. Even though he advised the room monitor on several occasions regarding his computer malfunctions and she noted the malfunctions, Mr. Davis states that he was never advised, during the initial instructions or when he voiced his

complaints during the examination, that he was required to file an appeal on the night of the examination.

With respect to the section of the examination that required candidates to determine what words were misspelled, the monitor reports that Mr. Davis did not report any problems with this section to her. Rather, the monitor advises that the screen Mr. Davis first brought to her attention was that of the split screen. The monitor states that she showed Mr. Davis that, even though he could not see the horizontal bar, if he moved his cursor over to that area and clicked, it would move the screen. She states that she indicated to Mr. Davis that all he had to do was click his cursor either toward the top or bottom of the screen on the right hand side and that it would move the screen. Additionally, the monitor states that she asked Mr. Davis at least twice if he was "OK" with the screens. Further, she states that this particular problem was not apparent on all of the screens and that since Mr. Davis indicated that he was OK, she did not offer to move him to another computer. The monitor also indicated that she did in fact tell Mr. Davis that she would document the problem on the Monitor's Report of Conduct. Moreover, the monitor states that she read the instructions to the candidates from the Monitor's Manual before the examination began, which includes a statement that candidates must file administration appeals on the night of the examination.

On January 20, 2004, the Assistant Director, Division of Selection Services, contacted Mr. Davis by letter and advised that he had reviewed the matter and made several determinations. The Assistant Director noted that Mr. Davis had completed 106 of the 120 questions. With respect to the computer, a review of the Personal Computer (PC) Mr. Davis utilized to take the test revealed that the monitor was configured in such a way that both edges of text were slightly bent inward and that this configuration appeared to have an effect on one test item in the written communication portion of the examination. Additionally, the scroll bar required for five items was not visible and required one to go off the screen to find it. In an effort to ameliorate this situation, the Assistant Director offered Mr. Davis the opportunity to retake the STB in its entirety, since many of the test items and situations are contextual in nature, but only to score test items #101 through 120. The results achieved on these test items would then be added to the results previously achieved on items #1 through 100 in order to derive a new score. Mr. Davis rejected this offer in lieu of proceeding with the instant appeal.

On appeal to the Merits System Board, Mr. Davis essentially reiterates his previous arguments. He also requests that he be allowed to retake the examination and have his entire examination score count or at least have 50 percent of the re-examination be averaged into his original test score.

CONCLUSION

Initially, with respect to the issue of filing an appeal of the examination conditions on the night of the examination, Mr. Davis vehemently argues that he was never advised that he had a right to file an appeal on the night of the examination, either in the monitor's oral presentation before the examination began or when he was experiencing a problem with his computer. On the other hand, the monitor asserts that she read the instructions from the Monitor's Manual, which

includes a statement that candidates must file administration appeals on the night of the examination. Although the record on this issue is in dispute, the Board will address the merits of Mr. Davis' appeal and provide clarification of the appeal process as it relates to the STB.

At the outset, it is noted that *N.J.A.C. 4A:4-6.4(c)* states that an examination candidate wishing to challenge *the manner in which the examination was administered* may file an appeal in writing at the examination site on the day of the examination. Additionally, due to the number of applicants who apply for supervisory examinations each year, it is essential that *examination review be limited in certain situations*. Further, *N.J.A.C. 4A:4-6.4(e)* permits the Commissioner of Personnel, on particular examinations, to modify or eliminate the review of examination questions and answers in order to ensure the security of the examination process. As such, the Board has determined that due to the reuse of the STB, no review of examination questions or keyed answers is permitted. *See In the Matter of Supervisory Test Battery Lists* (MSB, decided December 19, 2000). *See also, James T. Brady v. Department of Personnel*, 149 N.J. 244 (1997). However, despite the fact that no review of STB questions or keyed answers has been deemed appropriate, candidates may still challenge the manner in which the examination was administered but must do so at the examination site on the day of the examination.

Generally, all candidates for examinations are provided with an informational flyer called "Taking A Department of Personnel Examination" that specifically informs them of the need to appeal administration issues, including how the examination is conducted, at the examination center. The monitor instructs all candidates to read this information flyer before the start of the test. Indeed, the Appellate Division of Superior Court has noted that "the obvious intent of this 'same-day' appeal process is to immediately identify, address and remedy any deficiencies in the manner in which the competitive examination is being administered." *See In the Matter of Kimberlee L. Abate et al.*, Docket No. A-4760-01T3 (App. Div. August 18, 2003). Clearly, the matter at hand provides an excellent example of the necessity of this "same-day" appeal process.

The DOP strives to provide a comfortable testing environment free from extraneous distractions. Unfortunately, situations occur, like those the appellant describes, that are beyond the DOP's control. In this specific instance, the monitor did everything she could to remedy the situation at the examination center by showing Mr. Davis how to maneuver his cursor to the appropriate area of the screen. In this regard, it is noted that prior Merit System Board decisions have determined that computer malfunctions during the STB do not necessarily warrant administrative relief. *See In the Matter of Nancy Cyre* (MSB, decided October 22, 2003) (Monitor did everything he could to remedy situation when computer stopped and it was necessary to re-boot computer to resume testing process). Additionally, the monitor indicated that the problem with Mr. Davis' computer was not apparent on all of the screens and he informed her that he was OK to continue the testing process, so she did not offer to move him to a new computer. Further, as indicated earlier, the Division of Selection Services determined that the problems with the computer were isolated and initially occurred after Mr. Davis completed approximately 25% of the test.

Although Mr. Davis did not technically file a timely administration appeal of this issue, equitable relief is warranted in this case. It is not disputed in the record that a computer malfunction occurred, or that the appellant reported this malfunction to the monitor, or that the

monitor attempted to remedy the problem at the examination center on the night of the test given the situation as it occurred. Moreover, after an internal review, the Division of Selection Services offered Mr. Davis an opportunity to take the STB examination again in its entirety but to only score items #101 through 120. Given the contextual nature of the STB examination, and the fact that Mr. Davis has been exposed to the test material, to provide him an opportunity to retake the entire examination and have it graded in its entirety would not be fair to the other candidates. Further, a year has not passed since the administration of the initial examination. Thus, Mr. Davis would not be eligible for a new examination under the STB's re-test policy.¹ Additionally, it is clear that Mr. Davis did not have an optimum environment in which to compete in the examination relative to the portion of the examination where the computer text was bent inward. As such, the best relief possible under these circumstances is for Mr. Davis to be given the opportunity to retake the STB in its entirety, but to only score test items #101 through 120.

ORDER

Therefore, it is ordered that this appeal be granted in part, that Mr. Davis be scheduled for a make-up STB examination as soon as possible, and that the score he achieves on test items #101 through 120 be added to the results he previously achieved on items #1 through 100. If Mr. Davis passes the examination, his name should be added to the subject eligible list for prospective appointment opportunities only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

¹ Any eligible list that is generated as a result of the STB has a duration of two years. The test score is banked for two years for possible future use. Specifically, candidates who apply and are determined eligible for an announcement involving another supervisory title some time within two years of the date of their initial examination will have their STB score applied for that announcement. However, candidates may retake the STB after one year in response to future announcements for which they may be eligible. If a candidate elects to take the STB after one year, the new score will be used even if it is lower than the one it replaces. The tolling period for banking test scores begins on the day the initial STB examination is administered. The score will be applied as of the examination administration date of any future announcement to which a candidate is deemed eligible.